

General Terms and Conditions of Purchase

Section 1 Scope, Form

(1) The below General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our business partners and suppliers ("vendors"). The GTCP only apply if the vendor is an entrepreneur (Section 14 German Civil Code), a public law entity or a special fund under public law.

(2) The GTCP apply in particular to agreement on the sale and/or the delivery of movable things ("goods"), irrespective of whether the vendor produces the goods itself or purchases them from suppliers (Sections 433, 650 German Civil Code). Unless otherwise agreed upon, the GTCP apply in the version effective at the time the buyer placed the order or at any rate in the text form last communicated to him as a framework agreement also for the same types of future agreements without our having to refer to them again in each individual case.

(3) These GTCP apply exclusively. Deviating, contrary or supplementary General Business Terms and Conditions of the vendor's shall only become an integral part of the agreement and to the extent that we have expressly consented to their validity in writing. This consent requirement applies in any case, e.g. also if we accept the vendor's deliveries without reservation in knowledge of his General Business Terms and Conditions.

(4) Individual agreements concluded with the vendor on an individual basis (including ancillary agreements, supplements, and amendments) take precedence in every instance over these GTCP. A written agreement or our written confirmation is definitive for the content of such agreements, subject to evidence to the contrary.

(5) Legally relevant declarations and notifications of the vendor with respect to the agreement (e.g. setting a deadline, reminders, withdrawal) are to be submitted in writing, e.g. in handwritten or text form (e.g. letter, e-mail, telefax). Legal form requirements and additional validations, in particular in cases of doubt as the identity of the declaring entity, shall remain unaffected.

(6) References to the validity of legal regulations have only clarifying meaning. Therefore, even without such clarification, the statutory regulations shall be valid, to the extent that they are not directly modified or expressly excluded in these GTCP.

Section 2 Conclusion of contract

(1) Our order is considered binding at the earliest upon written submission or confirmation. For purposes of correction or completeness, the vendor shall point out to us any obvious errors (e.g. typos and calculation errors) and incomplete items in the order, including the order documents; otherwise, the agreement is deemed not to have been concluded.

(2) The vendor is required to confirm our order in writing within a period of 5 working days/weeks. Late acceptance is considered a new proposal and requires acceptance by us.

Section 3 Delivery time and delivery delay

(1) The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and no other arrangements have been made, it is 3 weeks from conclusion of contract. The vendor is obliged to notify us in writing without delay, if it is anticipated that he cannot meet the agreed delivery times – for whatever reasons.

(2) If the vendor does not render his service at all or not within the agreed delivery time, or if he is delayed, our rights – in particular with respect to withdrawal and claims for compensation – are determined according to statutory regulations. The regulations in Sect. 3 shall remain unaffected.

(3) If the vendor is in delay, we can demand lump-sum compensation for our damage caused due to the delay – in addition to further statutory claims – in the amount of 1% of the net price per entire calendar week, in total, however, no more than 5% of the net price of the goods delivered late. We reserve the right to document that a higher level of damage has occurred. The vendor reserves the right to document that no damage or a considerably lower level of damage has occurred.

Section 4 Performance, Delivery, Transfer of risk, Delay of acceptance

(1) The vendor is not entitled without our prior written consent to have the service owed by him rendered by third parties (e.g. subcontractors). The vendor bears the procurement risk for his deliverables, unless otherwise agreed in an individual cases (e.g. restriction to inventory).

(2) The delivery is made within Germany "free domicile" to the place specified in the order. If the destination is not specified and no other agreement has been made, the delivery is to be made to our registered business offices in Föhren. The respective destination is also the place of performance for the delivery and any subsequent performance (backlog).

(3) The delivery is to be accompanied by a delivery note, stating the date (issue and dispatch), contents of the delivery (FiWaRec® item number + index and quantity) as well our order ID (date, document number). If the delivery note is missing or is incomplete, we are not responsible for any resulting delays in processing and payment. Apart from the delivery note, a corresponding shipping advice is to be sent out with the same content.

(4) The risk of accidental loss and accidental deterioration of the product transfers to us with the handover at the place of performance. If acceptance has been agreed upon, this is decisive for the transfer of risk. In addition, in case of acceptance, the statutory regulations of the law on works contracts also apply accordingly. If we are in default of acceptance, this is considered equivalent to handover or acceptance.

(5) Statutory provisions apply to the occurrence of our default of acceptance. However, the vendor must also expressly offer us his performance if a specific or specifiable calendar period has been agreed for action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the vendor may demand compensation for his additional expenses in accordance with the statutory provisions (Section 304 German Civil Code). If the agreement relates to an unacceptable item to be manufactured by the vendor (custom manufacturing), the vendor shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

(6) The vendor shall pack, label and ship dangerous products in accordance with the relevant national and international regulations.

The vendor shall fulfill all obligations relating to him in accordance with the REACH Regulation (EC Regulation 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals) and the RoHS Directive (Directive 2011/65/EU of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment) with respect to delivery of the goods to us. In particular, the vendor shall provide us with the REACH declaration of conformity, including the safety data sheet in accordance with Article 31 REACH Regulation, and the RoHS manufacturer's declaration for all goods delivered to us.

The vendor is responsible for compliance with the REACH regulation and RoHS directive for all items and equipment delivered to us.

As products delivered to us by the vendor are installed in electrical and electronic equipment in accordance with the RoHS Directive, a declaration of compliance with the RoHS Directive must be provided, even if these products are not primarily electrical or electronic equipment.

The vendor is obliged to notify us of any notifiable substances in accordance with the REACH Regulation and RoHS Directive.

Section 5 Prices and Payment Conditions

(1) The price stated in the order is binding. All prices include statutory value-added tax, unless this is stated separately.

(2) Unless otherwise agreed in individual cases, the price includes all deliverables and ancillary services provided by the vendor (e.g. assembly, installation), along with all ancillary costs (e.g. proper packaging, transport costs, including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the vendor shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been made on time if our bank receives our transfer order prior to the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any maturity interest. The statutory provisions shall apply in case of payment default.

(5) We shall be entitled to rights of set-off and retention, as well as the defense of unperformed contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims against the vendor arising from incomplete or defective services.

(6) The vendor has a right of set-off or retention only in the case of counterclaims which have been legally established or are undisputed.

Section 6 Secrecy and Reservation of title

(1) We reserve the intellectual property rights and copyrights to illustrations, plans, drawings, calculations, operating procedures, product descriptions and other documents. Such documents are to be used exclusively for performance of contract and shall be returned to us after completion of contract. The documents are to be kept secret from third parties, even after the agreement has ended. The obligation of secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become officially known.

(2) The aforementioned provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples, and other items which we provide to the vendor for production. Such items – as long as they are not processed – are to be stored separately at the expense of the vendor and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of items provided by the vendor is performed on our behalf. The same applies to further processing of goods delivered by us, such that we are considered the manufacturer and acquire ownership of the product at the latest with the processing in accordance with the statutory provisions.

(4) The transfer of ownership of the goods is to take place unconditionally and without regard to the payment of the price. If we accept an offer of transfer of title from the vendor in individual cases, conditional on the payment of the purchase price, the vendor's reservation of title shall expire at the latest upon payment of the purchase price for the delivered goods. We remain authorized to resell the goods in the ordinary course of business, even before payment of the purchase price, with advance assignment of the resulting claim (alternatively, the simple reservation of title, extended to resale). In any case, all other forms of retention of title are thus excluded, in particular, extended, forwarded retention of title, as well as that extended to further processing.

Section 7 Defective delivery

(1) Unless otherwise agreed upon below, the statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or instruction manuals) and in the event of other breaches of duty by the vendor.

(2) In accordance with the statutory provisions, the vendor shall be liable in particular for ensuring that the goods have the agreed quality upon transfer of risk to us. In any event, the product descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or have been incorporated into the contract in the same way as these GTCP shall be deemed to be an agreement on quality. In this, it makes no difference whether the product description originates from us, the vendor, or the manufacturer.

(3) The statutory provisions (Sections 377, 381 German Commercial Code) to the duty of inspection and notification are excluded. FiWaRec®'s duty to inspect during the reception of the goods is limited to defects that become apparent during our incoming goods inspection under external examination, including the delivery documents (e.g. transport damage, wrong and short delivery) or that are recognizable during our quality control in a random sampling procedure. To the extent that acceptance has been agreed, there is no duty to inspect. Our duty to give notification of defects discovered later remains unaffected. Notwithstanding our duty to inspect, in any event our complaint (notification of defects) shall be deemed prompt and timely if it is sent within 14 working days of discovery or, in the case of obvious defects, of delivery.

(4) Subsequent performance shall also include the de-installation of the defective goods and their re-installation, provided that the goods have been installed in or attached to another item in accordance with their nature and intended use; our legal claim to reimbursement of relevant expenses shall remain unaffected. The vendor shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that no defect actually existed. Our liability for damages in the event of unjustified requests for the removal of defects remains unaffected; however, in this respect we are only liable if we recognized or failed with gross negligence to recognize that there was no defect.

(5) Without prejudice to our statutory rights and the provisions in paragraph 4, the following shall apply: If the vendor does not fulfill his obligation to provide subsequent performance – at our discretion either by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand from the vendor reimbursement of the necessary expenses or a corresponding advance payment. If subsequent performance by the vendor has failed or is unreasonable for us (e.g. due to special urgency, jeopardized operational safety or imminent occurrence of disproportionate damage), it is not necessary to set a deadline; we shall inform the vendor of such circumstances without delay, in advance where possible.

(6) Otherwise, in the event of a material defect or defect in title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we are entitled to compensation for damages and expenses in accordance with the statutory provisions.

Section 8 Supplier recourse

(1) In addition to claims for defects, we are entitled without restriction to our legally determined rights of recourse within a supply chain (supplier recourse according to Sections 445a, 445b, 478 German Civil Code). In particular, we are entitled to demand exactly the type of subsequent performance (rectification of defects or replacement delivery) from the vendor that we owe to our customer in the individual case. Our statutory right of choice (Section 439 (1) German Civil Code) is not restricted by this.

(2) Before acknowledging or fulfilling a claim for defects asserted by our customer (including reimbursement of expenses in accordance with Sections 445a (1), 439 (2) and (3) German Civil Code), we shall notify the vendor and request a written statement providing a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the vendor is responsible for providing proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

Section 9 Producer liability

(1) If the vendor is responsible for product damage, he shall indemnify us from third party claims to the extent that the cause is within his sphere of control and organization and he is liable himself in relation to third parties.

(2) Within the scope of his indemnification duty, the vendor is to reimburse expenses in accordance with Sections 683, 670 German Civil Code which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the vendor about the content and scope of recall measures – to the extent possible and reasonable – and provide him an opportunity for a statement. Further legal claims remain unaffected.

(3) The vendor shall take out and maintain product liability insurance with lump-sum coverage of at least EUR 10 million per personal injury/property damage incident.

Section 10 Limitation period

(1) The mutual claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise provided for below.

(2) Notwithstanding Section 438 (1) No. 3 German Civil Code, the general limitation period for claims for defects is 3 years from the transfer of risk. To the extent that acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation shall apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for claims secured by property for restitution of property of third parties (Section 438 (1) no. 1 German Civil Code) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right - in particular in the absence of a period of limitation - against us.

(3) The limitation periods under sales law, including the above extension, apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 German Civil Code) shall apply here, unless the application of the limitation periods of the law on sales leads to a longer limitation period in an individual case.

Section 11 Choice of law and place of jurisdiction

(1) These GTCP and the contractual relationship between us and the vendor shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the vendor is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is Trier. The same applies if the vendor is an entrepreneur within the meaning of Section 14 German Civil Code. In all cases, however, we shall also be entitled to bring suit at the place of performance of the delivery obligation in accordance with these GTCP or an individual agreement taking precedence or at the vendor's general place of jurisdiction. Statutory provisions taking precedence, in particular those concerning exclusive jurisdiction, shall remain unaffected.

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